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OGC HAS REVIEWED.

CITIZENSHIP

- Child Form Abroad. Expatriation.

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17 October 1949

Office of General Coursel

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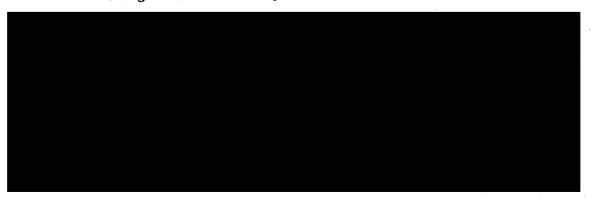
1. This is in rely to the questions raised in your memorands of 26 Dalto ber 1/1/7 and 9 September 1919.

citizen employed by this Since his wife is an alien, some question are arisen in regard to the citizenship of his children The problem was originally presented following the burth of Subject's daughter on 3 August 1917, and it has now arisen again after the recent inth of another child. The question has considerable attraction from a standpoint of technical interest, but it is even more appealing because of our sympathetic desire to alleviate what appears to be an inequitable aftertion. We have, therefore, again a dewed the ingenious and interesting argument presented, and studied the legislation involved.

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I. The partition of the law, which is the Hationality Act of 10h0, is found in Title 8 UCCA 8.601 (g) and states:

If A person bern outside the United States and its outlying persons of parents one of when is a citizen of the United States who, prior to the birth of such person, has had the person of the United States or one of its outlying pessesions, at least five of which were after it-taining the age of sixteen years, the other being an alicar freezided, That, in order to retain much citizenship, the child must raide in the United States or its outlying pessessions for a period or periods totaling five years between the other periods totaling five years freezided further, That, if the child has not taken up residence in the united States or its outlying pessessions by the time

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he rache: the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years! residence in the United States or its outlying percessions before reaching the age of twenty-one years, his American citis aship shall thereupon cesse.

The proceding provises shall not apply to a child born abroad whose knerican parent is at the time of the child's birth residing abroad solely or principally in the employment of the United States or a bone ride American educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation.

h. The desire to interpret the statute in a light which is favorable to the encloyed is certainly most compelling. He realized the per sibility that the American citizenship of his children might not be assured unless her turned in person to the United States prior to their birth. The fact that he did not do so is the direct result of a request on the part of this Agency that he remain in Italy and continue the work waich was, and still is, of considerable value to our operations. he has not concevered that his fears were justified, that his children are not altizons of the United Autes, but aliens who will be required to acquire their citizenship by naturalization when they become of age. We are completely sympathetic and can readily understand his desire to ostablish them U.S. citizenship by birth. As a matter of fact we believe it would be unnatural if he felt otherwise. But wherever our sympathics may lie, we cannot torture into the statute a meaning that does not exist. Your argument is ingenious and obviously the result of consider consider consider. Bondwar, we believe there are certain assumptions text cannot be supported.

so this been cataled the U. S. and its outlying possessions when one parent is an alien and the other is a U. S. ellizer. who, prior to the child's alrth, and lived for ten years in the United States or its possessions and had lived there for at least five years of the ton after reaching the age of sexteen. If the child does not passess a parent in that catalogy, then citizenship is not automatically granted to him at birth. It is true that prior to the Nationality Act of 1910 the citizen parent would have been required to live in the United States for no long r team one day to qualify the child for citizenship. An examination of the reports and hearings held the Act prior to its passage shows that the legislators specifically considered this point and hearing held to fact, the ten-year figure was something of a compremise.

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since the representative of the State Department indicated that that Agency desired a much longer period. Thus, sithwagh the child bern abread of a citizen parent with ten years and one month of American residence, livi g abroad by his can preference, is qualified as a citizen at birth, it is unfortunately true that the child of a citizen prent with mine years and cleven martis of American residence, living a read in the service of the Covernment, is classified as an alrem. It would be equally true - as it was under the old law is if only one day reparated the two conditions of status. The effect of the provises in to stop the operation of the grant of citizenship if the child does not perform cortain acts within stated times. Black, in the Third Edition of his Law Digitionary, defines "proviso" see "a condition or provision which is inserted in a deed, less, mortgage, or contract, and on the performance or nonperformance of which the validity of the instrument frequently depends; it usually begins with the word "provided." He goes on to exclain that a provise is to monly found at the end of an act or section, and is usually introduced by the word provided." While that word, as such, is not necessary, and the astter and form of the succeeding words are controlling, nevertheless, where the provises are clearly enumerated, and the intent of the authors is unequivocal, they must be accepted as they are written. The examption contained in the second paragraph must be restricted to the rovinos themselves and not to the basic grant which they medify. We agree that Co gress could have drafted the section to read "A gerean born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States, the other being an alien; Provided etc. F But the fact is that they did not so write

On The alundment of July 31, 1946, provided for slightly more liberal limitations on the residence of a garout who served in the armed corons during the last war. It still required a total of 10 years' 11.1. residence prior to the birth of the child, but it lowered the rec limit from 16 to 12. The passage of this amendment, you assert, cannot be accorded as a confirmation of Congressional intent not to make an exception in cases of citizen parents residing abroad in the corvice of a bona fide American interest." You base your conchusion on two reasons: first, because the actual membership of Congress had changed between the cassage of the Act and the amendment; and, second, because the alendment was made necessary by the interpretation of the original language, and not by the original language steelf. We are sorry that we cannot agree. Granted the anendment was the product of a different body of men, the very fact that it retained the ten year quality out to domination their concurrence in the latent of the other Congress. We do not believe that the present interpretation of the Act is capricious or distorted, and it would appear that the ansodment was passed only to avoid projudice to those men serving the

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States or its continental possessions when the citizen parent is never in in the C. S. Armed Porces or a Governmental agency.

the interpretation pisced on the art by the State Department is present that remidence within the United States to his only file years and one south total obtained sitis analy necessary melting only interpretation of the south total obtained citisonship unior the Act.

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Legal Decisions